

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

RAFAEL MARTIROSYAN,

Plaintiff,

v.

MADSEN, *et al.*,

Defendants.

Case No. 1:24-cv-01168-JLT-BAM (PC)

ORDER VACATING FINDINGS AND  
RECOMMENDATIONS

(ECF No. 26)

ORDER GRANTING PLAINTIFF'S  
REQUEST TO ACCEPT SECOND  
AMENDED COMPLAINT

(ECF No. 27)

Plaintiff Rafael Martirosyan ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

On June 20, 2025, Plaintiff was directed to file a second amended complaint including all relevant claims and defendants to be raised in this action, limited to 25 pages in length, excluding exhibits (or file a notice of voluntary dismissal). (ECF No. 17.)

On July 25, 2025, the Court granted Plaintiff's request for an extension of time to file an amended complaint. (ECF No. 20.) The Court directed Plaintiff to file a second amended complaint including all relevant claims and defendants to be raised in this action, limited to 25 pages in length, excluding exhibits, or file a notice of voluntary dismissal within thirty days from the date of service of the order. (*Id.* at 3.) The Court cautioned that if Plaintiff failed to file a

1 second amended complaint (or notice of voluntary dismissal) in compliance with the Court's  
2 order, then the action would be dismissed, with prejudice, for failure to prosecute, failure to obey  
3 a court order, and failure to state a claim. (*Id.*)

4 On August 28, 2025, the Court granted Plaintiff's request for a seven-day extension of  
5 time to file an amended complaint. (ECF No. 23.) The Court directed Plaintiff to file a second  
6 amended complaint including all relevant claims and defendants to be raised in this action,  
7 limited to 25 pages in length, excluding exhibits, or file a notice of voluntary dismissal within  
8 seven days from the date of service of the order. (*Id.*) The Court again cautioned Plaintiff that if  
9 he failed to file a second amended complaint in compliance with the Court's order, then the action  
10 would be dismissed, with prejudice, for failure to prosecute, failure to obey a court order, and  
11 failure to state a claim. (*Id.*)

12 On September 10, 2025, the Court granted Plaintiff's second request for a seven-day  
13 extension of time to file an amended complaint. (ECF No. 25.) The Court again directed  
14 Plaintiff to file the second amended complaint including all relevant claims and defendants to be  
15 raised in this action, or file a notice of voluntary dismissal, within seven days from the date of  
16 service of the order. (*Id.*) The Court once again cautioned Plaintiff that if he failed to file a  
17 second amended complaint in compliance with the Court's order, then the action would be  
18 dismissed, with prejudice, for failure to prosecute, failure to obey a court order, and failure to  
19 state a claim. (*Id.*) Plaintiff's second amended complaint was due on or before September 22,  
20 2025.

21 Plaintiff failed to file a timely second amended complaint (or notice of voluntary  
22 dismissal) in compliance with the Court's order. Accordingly, on October 1, 2025, the Court  
23 issued findings and recommendations to dismiss this action for failure to obey a court order and  
24 for failure to prosecute this action. (ECF No. 26.)

25 On October 2, 2025, Plaintiff filed the instant request to accept the second amended  
26 complaint filed as timely. (ECF No. 27.) Plaintiff asserts that he received one of the Court's  
27 orders granting an extension of time on September 15, 2025, setting the deadline to file by  
28 September 23, 2025. (*Id.* at 1.) Plaintiff claims that he subsequently experienced issues with the

1 library, submitting a grievance and various requests. (*Id.* at 1-2.) Plaintiff asserts that he then  
2 received the Court's second order granting an extension of time on September 19, 2025, setting  
3 the deadline to file by September 26, 2025. (*Id.* at 2.) Plaintiff was unable to make copies of the  
4 second amended complaint until September 26, 2025. (*Id.*) Plaintiff apologizes for the delay and  
5 requests that the Court accept the second amended complaint filed on September 26, 2025, as  
6 timely filed. (*Id.*) On October 6, 2025, Plaintiff filed his second amended complaint, which is  
7 more than four hundred pages long, inclusive of exhibits. (Doc. 28.)

8 Both Plaintiff's request and his second amended complaint are untimely. As stated in the  
9 Court's order, Plaintiff's deadline to file his second amended complaint is calculated from the  
10 date of service of the order, not the date of receipt. Relevant here, the Court's September 10,  
11 2025 order was served on Plaintiff by mail on September 10, 2025. (*See* docket.) Because the  
12 order was served by mail, 3 days are added after the period would otherwise expire. Fed. R. Civ.  
13 P. 6. Plaintiff's second amended complaint was therefore due on or before September 22, 2025.

14 However, in light of Plaintiff's *pro se* status and in an abundance of caution, the Court  
15 finds it appropriate to vacate the pending findings and recommendations and to grant Plaintiff's  
16 request to accept the second amended complaint. The Court will screen the second amended  
17 complaint in due course to determine whether it states a cognizable claim for relief.

18 Accordingly, IT IS HEREBY ORDERED that:

- 19 1. The findings and recommendations issued on October 1, 2025, (ECF No. 26), are  
20 VACATED.
- 21 2. Plaintiff's motion to accept the second amended complaint, (ECF No. 27), is  
22 GRANTED.
- 23 3. The Court will screen the second amended complaint in due course.

24  
25 IT IS SO ORDERED.

26 Dated: October 10, 2025

27 /s/ Barbara A. McAuliffe  
28 UNITED STATES MAGISTRATE JUDGE